

# **EXHIBIT 09**

## **Trial Tr. 07 19 18**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

RUTH V. BRIGGS, .  
Plaintiff, .  
vs. . 601 Market Street  
Philadelphia, Pennsylvania 19106  
July 19, 2018  
.  
TEMPLE UNIVERSITY, .  
.  
Defendants. .

TRANSCRIPT OF TRIAL

DAY 4

BEFORE THE HONORABLE ROBERT F. KELLY  
UNITED STATES DISTRICT JUDGE  
AND A JURY

APPEARANCES:

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1 reasonable doubt." That's -- that applies in a criminal  
2 case, not a civil case.

3 I have in my hand a copy of the verdict form, and  
4 it is composed of several questions; it's four pages long.  
5 And that -- you shouldn't look upon that as being burdensome  
6 because it is a good outline of what I'm going to tell you.  
7 They are questions that are -- will be about the charge that  
8 I'm about to start, and I think that you will find it an aid.  
9 So as I go through things, don't worry about am I going to  
10 remember all of this. This, I think, will help jog your  
11 memory.

12 This case involves two statutes. One is Age  
13 Discrimination in Employment Act and the other is Title VII,  
14 which in our case involves discrimination as to sex. And  
15 throughout the case, we been referring to sex or gender.  
16 It's probably more accurate to say that this is really a  
17 gender dispute case, but in any event, I'll probably use both  
18 expressions and discharge.

19 In this case -- this is as to age discrimination in  
20 employment claim, in this case, Ms. Briggs is alleging that  
21 Temple University terminated her employment because of her  
22 age. In order for Ms. Briggs to recover on this  
23 discrimination claim against Temple University, she must  
24 prove that Temple terminated her employment and intentionally  
25 discriminated against her. This means she must prove that

1 age was a determinative factor in their decision.

2 Let me correct that, that but for her age, not a  
3 determining -- but for her age, Temple University would not  
4 have terminated her.

5 To prevail, Ms. Briggs must prove both of the  
6 following by a preponderance of the evidence: That Temple  
7 University terminated her employment; and, second, that  
8 Temple University terminated her employment because of her  
9 age. In other words, it was the reason that Temple  
10 University terminated her employment.

11 Although Ms. Briggs must prove that Temple  
12 University acted with the intent to discriminate, Ms. Briggs  
13 is not required to prove that Temple University acted with  
14 the particular intent to violate her federal civil rights.  
15 Moreover, she is not required to prove -- to produce direct  
16 evidence of intent such as statements admitting  
17 discrimination. Intentional discrimination may be inferred  
18 from the existence of other facts. You should weigh all the  
19 evidence received in the case in deciding whether Temple  
20 University intentionally discriminated against Ms. Briggs  
21 because of her age.

22 If you find that Temple University terminated Ms.  
23 Briggs' employment, Temple University has given a non-  
24 discriminatory reason for its decision to terminate Ms.  
25 Briggs' employment. If you believe Temple University's

1 stated reason and if you find that Temple University's  
2 decision to terminate Ms. Briggs' employment would have  
3 occurred because of Temple University's stated reason,  
4 regardless of Ms. Briggs' age, then you must find for Temple  
5 University. If you disbelieve Temple University's stated  
6 reason for its conduct, then you may, but need not, find that  
7 Ms. Briggs has proven intentional discrimination.

8           In determining whether Temple University's stated  
9 reason for its actions was a pretext or excuse for  
10 discrimination, you may not question Temple University's  
11 business judgment. You cannot find intentional  
12 discrimination simply because you disagree with the business  
13 judgment of Temple University or because it is harsh or  
14 unreasonable. You are not to consider Temple University's  
15 wisdom.

16           However, you may consider whether Ms. Briggs has  
17 proven that Temple University's reason is merely a cover-up  
18 for discrimination. Ultimately, you must decide whether Ms.  
19 Briggs has proven that but for her age, Temple University's  
20 decision to terminate her employment would not have been  
21 made.

22           There is also a claim of hostile work environment  
23 and harassment. This is under the Age Discrimination  
24 Employment Act, as well as Title VII. They claimed that this  
25 was done because of her gender or sex. Ms. Briggs claims

1 reason for Temple University's terminating her employment.

2 I'm going to at this time give you an instruction  
3 as to damages in the event that you find the age  
4 discrimination in employment has been proved. And the fact  
5 that I give you an instruction on damages should not be taken  
6 by you as an indication from me that I think that you should  
7 find any particular verdict. In this instruction, I am  
8 required to give you all of the law that you may need to  
9 decide the case. So the fact that I give you this  
10 instruction, as I said, should not be taken as an indication  
11 from me about what verdict you should render.

12 If you find that Temple University terminated Ms.  
13 Briggs' employment and intentionally discriminated against  
14 Ms. Briggs because of her age or sex, then you must determine  
15 the amount of damage that Temple University's actions have  
16 caused Ms. Briggs. Ms. Briggs has the burden of proving  
17 damages by a preponderance of the evidence.

18 You must award as actual damages an amount that  
19 reasonably compensate Ms. Briggs for any lost wages and  
20 benefits, taking into consideration any increases in salary  
21 and benefits, including pension that Ms. Briggs would've  
22 received from Temple University had Ms. Briggs been the  
23 subject of Temple University's -- had she not been the  
24 subject of Temple University's discrimination.

25 Back-pay damages, if any, apply from the time of --

1 he employment ended, until the date of a verdict. You must  
2 reduce any award by the amount of expenses that Ms. Briggs  
3 would have incurred in making those earnings. As I say that,  
4 I don't think you have -- anybody has given you any evidence  
5 of that.

6 If you award back pay, you are instructed to deduct  
7 from the back pay a figure, whatever wages Ms. Briggs has  
8 obtained from other employment during that period. However,  
9 note that you should not deduct -- well, the rest of it  
10 doesn't matter.

11 You are further instructed that Ms. Briggs has a  
12 duty to mitigate her damages. That is, she has -- she is  
13 required to make reasonable effort under the circumstances to  
14 reduce her damages. And it's Temple University's burden to  
15 prove that Ms. Briggs has failed to mitigate. So if Temple  
16 University persuades you by a preponderance of the evidence  
17 that Ms. Briggs failed to obtain substantially equivalent job  
18 opportunities that were reasonably available to her, you must  
19 reduce the amount of damages by the amount of wages that Ms.  
20 Briggs reasonably could have earned if she had obtained those  
21 opportunities.

22 In assessing age discrimination in employment  
23 damages, you must not consider attorneys fees or costs or  
24 litigation costs in this case.

25 There's an element of damage, liquidated damages if

1 MS. MATTIACCI: You know --

2 MR. HARRIS: (indiscernible)

3 MS. SATINSKY: Your Honor, the instruction is fine  
4 as it is.

5 THE COURT: I'm not changing it now.

6 MS. MATTIACCI: Okay. I just wanted --

7 (Sidebar concluded)

8 THE COURT: The jury may retire to consider its  
9 verdict.

10 (Jury excused to begin deliberations at 12:24 p.m.)

11 THE COURT: The jury has its lunch there. You  
12 know, if the attorneys want to get lunch, I guess, but try to  
13 be back, but be back definitely within an hour.

14 MR. HARRIS: Very well.

15 THE COURT: If you can be back sooner, that's all  
16 the better because they may have a question right away, you  
17 never know.

18 MR. HARRIS: Okay.

19 MS. MATTIACCI: Okay.

20 THE COURT: All right. Thank you.

21 COUNSEL: Thank you, Your Honor.

22 (Off the record at 12:25 p.m.)

23 (Proceedings resume at 2:39 p.m.)

24 (Jury not present)

25 THE COURT: The jury has sent a question. The

1 question is how do we calculate the lost wages? Any  
2 suggestions on what I should tell them?

3 MS. MATTIACCI: Well, Your Honor, we could provide  
4 them with the amount of money that she would have made if she  
5 stayed there minus the amount of money that she has made,  
6 which was the calculation that I put on the screen during the  
7 closing.

8 THE COURT: Well, you can't add to the record.  
9 They were given some figures, but they were very general,  
10 right?

11 MS. MATTIACCI: They were. It was the -- it was  
12 really her salary that she would -- it was \$53,000 was what  
13 she made at Temple, plus benefits. And there were -- that  
14 number was given to them. And then they were told that she  
15 made \$22,000 a year since then.

16 THE COURT: Okay.

17 MS. MATTIACCI: And the -- you know, I just -- I  
18 did the calculation, it was on the screen during the closing,  
19 of what the difference was. Maybe they just didn't remember  
20 it because they couldn't, you know, write it down.

21 THE COURT: 53,000 and 22?

22 MS. MATTIACCI: No, it was --

23 THE COURT: That was the testimony?

24 MS. MATTIACCI: No, 69,000 is the -- it's 50 -- it  
25 was 50 -- 69,000 was her total compensation at Temple per

1 the second two years is where the \$22,000 per each year comes  
2 out. So the first two years she's completely out 69,000.  
3 The second two years, it's 22,000 deducted each year.

4 THE COURT: Well, I don't want to --

5 MS. MATTIACCI: I mean, you could tell them that  
6 since the time of her termination, she has made 44,000, and  
7 if she was still at Temple, she would have made 69,000 per  
8 year. She -- and they know she's been out of work for four  
9 years.

10 MR. HARRIS: Judge, the issue is, as this Court --  
11 as we directed the Court at side bar, unfortunately Ms.  
12 Briggs stopped looking for work, and that's into the record,  
13 as well, once she received her employment as a home health  
14 care assistant.

15 THE COURT: I am going to tell the jury that they  
16 -- you know, if they want some particular testimony read  
17 back, we will do it. But, you know, I don't want to search  
18 the record at this point, frankly.

19 Bring the jury in.

20 THE BAILIFF: They need two minutes, Judge. Two  
21 are in the restroom.

22 MS. MATTIACCI: Your Honor, the calculation of the  
23 benefits is in trial Exhibit P-62 on Page 11. This is an  
24 exhibit in evidence. I would propose that the jury --

25 THE COURT: Show it to the other side. Would you

1 her subsequent employment, how much she has made since she's  
2 found a new job. And we propose those are the only two  
3 things that should be heard.

4 THE COURT: Read that.

5 MR. MUNSHI: Question:

6 "And while you were working at Temple, what was  
7 your annual salary?

8 "Answer: From \$50,000 with benefits.

9 "Question: And at the \$10.70 that you are -- that  
10 you've been making in total, how much have you made working  
11 as a home healthcare aide for two years?

12 "Answer: It's about 22,000 a year, so two -- it's  
13 been two years now, so forty-four."

14 THE COURT: Does that help?

15 A JUROR: Yes.

16 A JUROR: Yes.

17 THE COURT: The jury may retire to consider their  
18 verdict.

19 (Jury resumes deliberations)

20 MR. HARRIS: We were trying to find the clip, and  
21 I'll leave it to the Court's discretion, the portion of the  
22 transcript where Ms. Briggs said that she stopped looking for  
23 a job. I think they're entitled to receive that, as well,  
24 and that's what I was explaining to counsel.

25 THE COURT: I tried to give them what they asked

1 for, and that's it. You may have an exception.

2 MR. HARRIS: Very well. Thank you.

3 THE COURT: I'll go off.

4 (Off the record at 2:52 p.m.)

5 (Proceedings resume at 2:58 p.m.)

6 (Call to order of the Court)

7 THE COURT: You may be seated.

8 All right. Take the verdict.

9 THE CLERK: Yes, Your Honor. Members of the jury,  
10 please rise.

11 THE COURT: I don't want them to rise.

12 THE CLERK: Okay, I'm sorry. Everybody be seated.  
13 Just the foreperson.

14 A JUROR: Okay.

15 THE CLERK: Members of the jury, have you reached a  
16 verdict based upon the questions from the Court?

17 THE FOREPERSON: Yes.

18 THE CLERK: Will the foreperson please answer the  
19 Question 1, yes or no?

20 THE FOREPERSON: No.

21 THE CLERK: Question 2, yes or no?

22 THE FOREPERSON: Yes.

23 THE CLERK: Question 3, yes or no?

24 THE FOREPERSON: Yes.

25 THE CLERK: Question 4, yes or no?